

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.F.A. Nos: 14, 15, 16, 17, 18, 19, 20, 21, 22,
23 and 24 of 1997 alongwith cross objections.

Judgment reserved on:12.7.2006

Decided on : July 24, 2006

1. RFA No. 14 of 1997 alongwith C.O. 342 of 1997		
Land Acquisition Collector and others		Appellants.
VERSUS		
Sher Singh and others		Respondents

2. RFA No. 15 of 1997 alongwith C.O. 102 of 1997		
Land Acquisition Collector and others		Appellants.
VERSUS		
Megh Singh and others		Respondents

3. RFA No. 16 of 1997 alongwith C.O. 103 of 1997		
Land Acquisition Collector and another		Appellants.
VERSUS		
Shiv Dayal and another		Respondents

4. RFA No. 17 of 1997 alongwith C.O. 104 of 1997		
Land Acquisition Collector and another		Appellants.
VERSUS		
Fate Ram and another		Respondents

5. RFA No. 18 of 1997 alongwith C.O. 105 of 1997		
Land Acquisition Collector and another		Appellants.
VERSUS		
Tek Chand		Respondent

6. RFA No.19 of 1997 alongwith C.O. 80 of 1997		
Collector Land Acquisition and another		Appellants
Versus		
Saheb Ram and others		Respondents

7. RFA No.20 of 1997 alongwith C.O. 148 of 1997**Collector Land Acquisition and another****Appellants****Versus****Kahan Singh and others****Respondents****8. RFA No.21 of 1997 alongwith C.O. 95 of 1997****Collector Land Acquisition and another****Appellants****Versus****Ram Singh and others****Respondents****9. RFA No.22 of 1997 alongwith C.O. 144 of 1997****Collector Land Acquisition and another****Appellants****Versus****Kishori Lal and others****Respondents****10. RFA No.23 of 1997 alongwith C.O. 88 of 1997****Collector Land Acquisition and another****Appellants****Versus****Mohar Singh and others****Respondents****11. RFA No.24 of 1997 alongwith C.O. 89 of 1997****Collector Land Acquisition and another****Appellants****Versus****Krishan Kumar and another****Respondents*****Coram*****The Hon'ble Mr. Justice Deepak Gupta, Judge.*****Whether approved for reporting?*****For the Appellant : Mr.Shrawan Dogra, Advocate.****For the Respondents : S/Sh. K.D.Sood and Alok Ranjan, Advocates**

Deepak Gupta, Judge

This judgment shall dispose of 11 appeals and cross objections filed in all the appeals as they arise out of a common award.

The brief facts necessary for disposal of the cases are that the appellant Board acquired 22-7-12 bighas of land for the construction of a colony for the Larji Hydel Project in village Muhalu Khamradha, Sub Tehsil Bali Chowki, District Mandi, H.P. The State of H.P. issued Notification under Section 4 of the Land Acquisition Act 1894 on 7.12.1987 which was published in various newspapers on 9.1.1988. Thereafter Notification under Section 6 of the Act was issued on 11.7.1988 and published in Rajpatra and other newspapers on 30.7.1988. The objectors filed their claims before the Land Acquisition Collector and the Land Acquisition Collector vide his award dated 24.8.1990 determined the compensation for various categories of lands as follows:-

1. Barani Awal: Rs.3,102/- per Bigha
2. Barani Dom: Rs.2,300/- per Bigha
3. Kharyatar: Rs.660/- per Bigha
4. Bagicha Barani:Rs.5,940/- per Bigha

The claimants were not satisfied and filed reference petitions under Section 18 of the Land

Acquisition Act. All the reference petitions were consolidated and disposed of by a common award dated 14.8.1996 and the learned District Judge, Mandi, Kullu and Lahaul & Spiti districts at Mandi has fixed the market value of different kinds of lands as follows:-

- | | |
|--------------------|-----------------------|
| 1. Barani Awal: | Rs.25,000/- per bigha |
| 2. Bagicha Barani: | Rs.30,000/- per bigha |
| 3. Barani Dom: | Rs.20,000/- per bigha |
| 4. Banjar Kadim: | Rs.15,000/- per bigha |
| 5. Kharyatar: | Rs.10,000/- per bigha |

The appellants have filed the present appeal challenging the assessment of the market value as done by the learned District Judge, Mandi, Kullu and Lahaul & Spiti districts at Mandi. According to the appellants the award is very much on the higher side and requires to be reduced. The land owners have also filed cross objections in all the cases. They have claimed enhanced compensation on the value on the value of the land and in two of the cases i.e. RFA Nos. 14 and 16 of 1997 compensation is also sought for houses, retaining wall etc. It would be pertinent to mention that the approximate enhancement sought by the claimants is by Rs.40,000/- per bigha over and above the rates fixed by the learned District Judge. At the time of arguments the claimants

limited their claim with regard to the value of the land only.

I have heard Mr.Shrawan Dogra, learned counsel for the appellants and Mr.Alok Ranjan, counsel for the respondents-cross objectors.

The only point arising for determination in the present case is the fixation of the market value of the acquired land. According to Mr.Shrawan Dogra the petitioners who are in the position of a plaintiffs have not proved the value of the land. He submits that when a huge tract of land is acquired then sale instance of only 1 biswa i.e. 45 square yards of land becomes totally irrelevant and cannot be taken into consideration. He further submits that necessary deductions have not been made while computing the market value of the land.

On the other hand, Mr.Alok Ranjan, learned counsel appearing on behalf of the respondents, urged that in fact the learned District Judge has gravely erred in not taking into consideration the awards relating to the same notification made by the Land Acquisition Collector for neighbouring villages. He further submits that even on the basis of the sale instances proved on record the amount of deduction made by the learned District Judge

is highly excessive and, therefore, he submits that suitable enhancement be made in the compensation to be awarded.

I have gone through the entire record of the case. The claimants have proved on record two awards relating to the same notification which were Award No. 55, Ex.PW-1/B and Award No.56, Ex.PW-1/A. Award Ex.PW-1/A relates to acquisition of the land in village Aut. Aut is at a distance of about 6 k.m. from Larji and is on the National Highway. The rates fixed for Aut have no relevance to the rates for Larji and hence this award is to be discarded.

As far as Ex.PW-1/B is concerned, the same relates to village Khamradha. No doubt one of the claimants PW-1 while appearing in the witness box has stated that the acquired land in the present appeals and the land in Muhalu Khamradha are only about 100 meters from National Highway. But the distance between the two lands has not been stated. No reference has been made to the quality and type of the land and the relative disadvantages and advantages of the said land. I am, therefore, unable to rely upon this award also.

In addition to the aforesaid awards the appellants have placed reliance upon three sale deeds Ex.PW-1/D, Ex.PW-1/E and Ex.PW-1/F. The sale deed Ex.PW-1/D, dated 9.2.1988 relates to a transaction whereby 1 biswa of land was sold for Rs.6,500/- by PW-1 Kahan Singh, son of Bhag Chand, who is one of the claimants, to PW-4, Kahan Singh, son of Durga Singh. The second sale instance is depicted in Ex. PW-1/E dated 22nd January, 1988 whereby 1 biswa of land has been sold for Rs.5,000/- by Ganga Ram, father of PW-5 Mohan Singh, to Uttam Ram, PW-6. It would be pertinent to mention that Ganga Ram is also admittedly a claimant in one of the cases. The third sale deed Ex.PW-1/F is dated 17.2.1986. According to this sale deed 17 biswansis of land was sold by PW-7 Shibu to one Murari Lal. The land in question is Barani Doem. As noted above, Section 4 Notification in the present case was published on 9.1.1988. The sale instances reflected in Ex.PW-1/D and Ex.PW-1/E are after the said date. These sales or small portions of lands have been made by land owners whose lands were acquired. It is very likely that these sale instances have been made only to enhance the value of the land. No reliance can be placed on these

sale instances. That leaves us with only one sale instance reflected in PW-1/F whereby 17 biswansis of Barani Doem land was sold for Rs.3500/-. This works out to Rs.4117.65 per biswa or Rs.82,353/- per bigha.

At this stage it would be pertinent to refer to various authorities cited by the parties relating to the probative value of transactions of such small pieces of land while assessing the market value of larger areas of land. The apex court in **The Collector of Lakhimpur Vs. Bhuban Chandra Dutta AIR 1971 SC 2015** held that when a large area is the subject matter of the acquisition is to be sold, it cannot possibly fetch a price at the same rate at which small plots can be sold. This view was followed in **Smt.Padma Uppal and others Vs. State of Punjab and others (1977) 1 SCC 330** and **Prithvi Raj Taneja (Dead) By Lrs. Vs. The State of Madhya Pradesh and another (1977) 1 SCC 684**. The apex court in **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another (1988) 3 SCC 751** laid down various guidelines as to how the market value of the land should be assessed. The basic principle is that what would be the price offered by a hypothetical willing purchaser for the land in question, to a voluntary

seller. Obviously when fixing the price of the land the purchaser will keep in mind the size of land, proximity to the road, frontage if any on the road, the proximity to developed urban areas, shape of the plot etc. It will also be required to be seen whether the land is situated in an interior area and requires to be developed etc. This point again came up for consideration before the apex court and the apex court in **Shaji Kuriakose and another Vs. Indian Oil Corporation Ltd. and others (2001) 7 SCC 650** held that the comparable sales method of valuation of the land is best method to assess the market value of the land. The apex court laid down the following guidelines:-

“3. x x x x x x x x x x x x x x x x x x x x x x x x
 However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the

land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value fo the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

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Similar view has been taken in **Ranbir Singh and another Vs. Union of India (2005) 12 SCC 59**. It is in the light of the law laid down by the apex court that I proceed to decide what should be the market value of the land in question.

As already held above, there is only one sale deed Ex.PW-1/F which reflects a genuine transaction. The price of Barani Doem land as per this transaction comes to Rs.82,353/- per bigha. However, the land sold under this sale deed is only 17 biswansis which is approximately $37\frac{1}{2}$ square yards, whereas the total acquired land under this notification is more than 20000 square yards. This is such huge difference that a substantial deduction will have to be made while

assessing the value of the acquired land. In addition thereto the land has been acquired for the purpose of setting up a colony. This will require development. Some land will have to be left aside for paths and some land for common purposes of the persons living in the colony.

The value of Baran Doem land as reflected in Ex.PW-1/F works out to Rs.82,353/-. Keeping in view all the factors, such as the smallness of the plots and the fact that the acquired land though near the bazaar at Larji was situated across the river which did not even have a permanent bridge at the time of acquisition, I feel that it would not be inappropriate to make a deduction of approximately about 67% in the value of the land and the market value of Baryani Doem land will work out approximately to Rs.27,000/- per bigha. The value of the other kinds of land shall also have to be enhanced accordingly. Keeping in view the above guidelines the value of the various different lands is affixed as follows:-

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|-------------------|---|-----------------------|
| 1. Baryani Awal | = | Rs.34,000/- per bigha |
| 2. Bagicha Barani | = | Rs.40,000/- per bigha |
| 3. Banjar Kadim | = | Rs.20,000/- per bigha |
| 4. Khadetar | = | Rs.13,500/- per bigha |

The claimants shall also be entitled to additional compensation under Section 23(1-A) of the Act at the rate of 12% per annum on the market value of the land as assessed above from 9.1.1988 i.e. the date of publication of notification under Section 4 till 24.8.1990 i.e. the date of award passed by the Land Acquisition Collector or the date of taking possession of the land, whichever is earlier. The claimants shall be entitled to solatium on the aforesaid market value so fixed at the rate of 30%.

The Land Acquisition Collector shall also pay interest at the rate of 9% per annum on the enhanced amount of compensation (market value + solatium) for a period of one year from the date on which the possession was taken and thereafter at the rate of 15% per annum from the date of expiry of one year till deposit of the said amount in court.

In view of the above discussion the appeals are dismissed, cross objections are allowed and the compensation is enhanced in the aforesaid terms.

July 24, 2006(K)

(Deepak Gupta), Judge